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INFORMATION ON

MWSBE Program Updates and Departments' Role

September 23, 2013

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Minority, Women, Small Business Enterprises Program Updates

- How did we get here?
- Governing Ordinance Changes
- Programmatic Enhancements
 - New Procedures and Forms
- Contract Specific Goal Setting



City's MWSBE Policy



- Program was established in 1984 to remediate discrimination
- Chapter 15 of the Code of Ordinances:

It is the policy of the city to stimulate the growth of local minority, women and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting.



How did we get here?



- 2010: A MWBE Transition Taskforce Report which recommended various changes to the Program
- 2012: Construction Services Disparity Study
 - Found statistical and anecdotal evidence of business discrimination against minorities and women in the City's relevant market area.
 - Findings supports that the City has a compelling interest to maintain a race and gender conscious program to remediate discrimination in City contracting.
 - 2013 Disparity Study Working Group to address recommendations
 - Stakeholder feedback about strengthening the Program All related documents are available on OBO's website on the "OBO Reports" page.



Updated Governing Ordinance: Chapter 15

- Effective July 1, 2013
 - Reinstate Women Business Enterprises in Program for Construction Services
 - Standardization of Department Roles
 - Counties covered expanded from 8 to 10 (added San Jacinto and Austin)
 - Mandatory Arbitration of prime and subcontractor disputes removed. Mediation services will continue.
 - MWBE Program review every 5 years
 - Quarterly MWSBE Awards Reports
 - Clarified Definitions
 - Refined responsibilities of the Contract Compliance Commission
 - Persons with Disabilities Business Enterprises expansion



WBE Goals Reinstated on Construction Contracts

- In the 2009, Kossman v. City of Houston court settlement, women participation goals were removed from construction contracts.
- The Construction Disparity Study published in April 2012 found that women participation dropped by approximately 50% on City of Houston construction contracts post Kossman settlement agreement.
- The Disparity Study Working Group, with Stakeholder support, recommended the reinstatement of WBE goals back into the Program.



Chapter 15: Department Responsibilities

- Departments with procurement budgets over \$3 million shall submit annual procurement forecasts and utilization plans to OBO.
- Engage in educating certified firms on procurement procedures.
- Send bid solicitations and RFPs to MWSBEs in a timely manner.
- Refer certified and presumed MWSBEs to OBO for certification and technical assistance services.
- Directors review requests for waivers or modification of citywide participation goals, on solicitations, prior to submission to OBO for approval.
- Monitor departmental procurement activities to ensure compliance with progress towards the citywide participation goal.



Chapter 15 Revision



Persons with Disabilities Business Enterprises (PDBE) Program

- Targeted outreach initiative for the inclusion of disabled veterans as persons qualified to participate in the City's PDBE program.
- Basics: Disabled veterans must have:
 - Served in the armed forces;
 - Been honorably discharged; and
 - Have proof of a service-connected disability
- Disabled veterans must meet all other qualifications of the PDBE program and applicable provisions of Chapter 15.



Non-Codified Ordinance Changes



- Adopt annual citywide MWSBE goal of 34% for Construction
 - (4% SBE cap for contract-specific goal)
- Unchanged citywide goals:
 - 11% Purchasing
 - 24% Professional Services
- PDBE Goal
 - 1% Overall Goal of City's Expenditures



Annual Citywide Goals



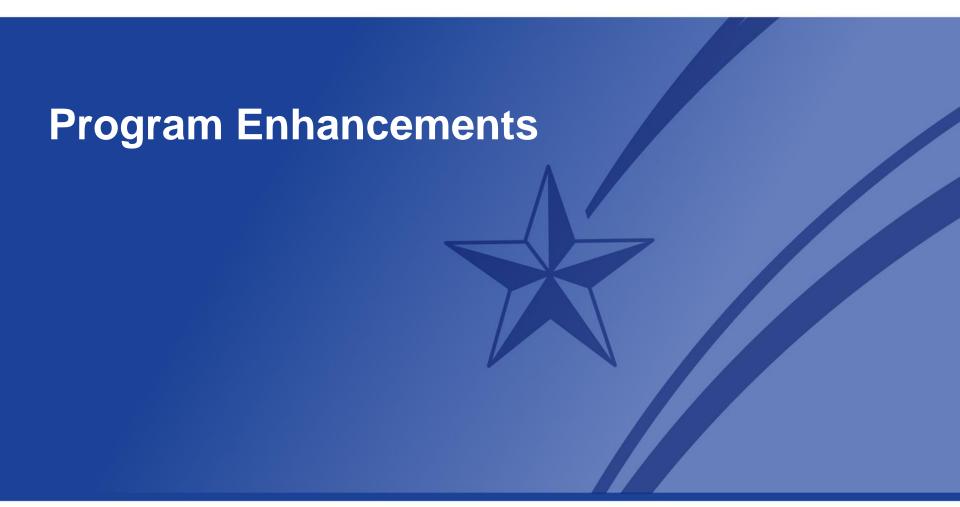
Progress made towards meeting annual citywide goal is measured by counting the participation of minorities, women and small business enterprises (Construction) on prime contracts, subcontracts, and joint ventures.







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Bid Submission – Construction Contracts Only

- Participation Plans or Good Faith Efforts are required with bid submission for contracts advertised after July 1, 2013
- A new series of forms were created for contractors to complete:
 - Document 00470: Bidder's MWSBE Participation Plan
 - Document 00471: Pre-Bid Good Faith Efforts
 - Document 00472: Bidder's MWSBE Goal Deviation Request
 - Document 00470A: CMAR/Design-build Contractor's MWSBE Participation Plan
- Post-Award new forms
 - Document 00570: Contractor's Revised MWSBE Participation Plan
 - Document 00571: Record Of Post-Award Good Faith Efforts
 - Document 00572: Contractor's Request for Plan Deviation



- Updated Documents 00808 & 00808A- MWSBE Policy
- Revised Good Faith Efforts Policy
 - Details Pre-Award and Post- Award GFE steps
 - New Section on Change Orders
 - Requirement to make GFE to achieve the approved Participation Plan Percentage is applicable to change orders.
 - Contractor's efforts to timely and efficiently deliver the project will be considered.

All documents can be found on OBO's website on the Contract Compliance page.





Utilization Monitoring Pilot – Construction and Professional Services

 GSD and PWE will assume day-to-day monitoring of MWSBE participation goals while OBO will maintain oversight role, approve deviations and good faith efforts requests.

Sanctions

- Expand contracts rating to include all contract types
- Failure to make good faith efforts to meet the MWSBE goal may result in suspension of participation on city contracts for up to 5 years.

Focus on Contract Specific MWSBE Goals, which includes categorical goals (PWE & GSD)





NEW: OBO Department Services Unit

- Review participation and/or GFE plan at bid submission.
- Assist departments with setting contract specific goals.
- Review goal waiver requests.
- Facilitate OBO Procurement Training Institute to address common compliance issues and best practices.





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Setting Contract Specific Goals

Setting Contract Goals



- Departments Directors are responsible for setting goals on regulated and goal-oriented contracts, taking into consideration local availability of certified MWSBEs.
- NEW: Mayor Parker has charged OBO with <u>reviewing and</u> <u>approving</u> all contract goals, before advertisement, that are lower then the default Citywide goals:
 - Construction (34%); Professional Services (24%); Purchasing (11%)



Which Contracts Require Goals?



Goal-Oriented Contracts

- Any contract, agreement or other undertaking anticipated for construction work in excess of \$1,000,000
- The supply of goods or non-personal or non-professional services in excess of \$100,000
- For which Competitive bids are required by law
- Not within the scope of the DBE programs of the U.S. EPA or U.S. DOT

Regulated Contracts

- Any contract that meets the following requirements:
 - Competitive bids are not required by law
 - Contracts not covered by the MWBE programs of the U.S. EPA or the U.S. DOT



Setting Contract Specific Goals



- Emphasis on setting contract specific goals rather than defaulting to the citywide aspirational goals
- Contract specific goals are determined by the subcontracting work elements of each contract <u>and</u> the availability of certified firms.
- Where departments (PWE and GSD) have repetitive contract types, categorical goals have been set.
- OBO has created guidance and a worksheet for contract specific goal setting – on Citypointe:: http://citypointe/FASvcs_DEPT/DEPT/obo/Pages/DepartmentServices-Area.aspx



Setting Contract Specific Goals: Guide



DEPARTMENT GUIDANCE FOR SETTING CONTRACT-SPECIFIC GOALS

Step 1:

Identify the major work elements in the scope of work or scope of services. Apportion a percentage and/or dollar value for each scope item or work element accounting for 100 percent and/or total dollar value of contract.

Step 2:

Identify the North American Industry Classification System (NAICS Codes) that matches the identified major work elements.

Step 3

For solicitations with City goals (M/WBE and SBE) search the <u>City's Online Directory</u> and for solicitations using U.S Department of Transportation grant funding (DBE goals) use the <u>Texas Unified Certification Program Directory (TUCP)</u> to identify certified firms with NAICS Codes that match the identified major work elements.

Helpful links to Bookmark:

- City's Online Directory: https://houston.mwdbe.com/FrontEnd/VendorSearchPublic.asp
- TUCP Directory: http://www.txdot.gov/apps-cg/tucp/temp.htm

Step 4:

Determine the universe of the firms (non-certified and certified) who perform work in the identified NAICS Codes using one of the following*:

- City's Disparity Study Data
- Bidder's List
- U.S. Census Bureau for Houston-Sugar Land-Baytown area
- Vendor's List
- Industry databases (Hoovers, Dun & Bradstreet)

Step 5

Using the data from Steps 1 - 4 you can begin to calculate your contract-specific goal.

Divide Number of Certified Firms for each NAICS Code by Number of Total Firms for that NAICS
Code which will result in the relative availability of certified firms for each NAICS Code.





of Total Firms for that NAICS Code





Multiply the Relative Availability by the percentage and/or dollar value for each scope item or work element which will result in the weighted availability in each NAICS Code, then add all the weighted availability numbers to arrive at the contract-specific goal.









Weighted Availability

September 2013



^{*}This is not an exhaustive list.

Step I:

- Determine if the contract has divisibility
- Determine each major work element
- Identify the NAICS code for each major work element
- Various approaches to determining work elements:
 - Construction Contracts: Engineers Cost Estimate use each bid item as defining work elements.
 - Professional Services Scope of Services use distinct deliverables to determine work elements.
 - Purchasing- Scope of Work-identify divisible work elements



Step II:

- Determine the percentage each work element represents of total contract value or the total anticipated dollar amount for each work element (excl. contingency):
 - Construction Contracts: Engineers Cost Estimate should already include the dollar value of each item, including materials and labor
 - Professional Services Scope of Services determine the percentage of scope.



Sample Scope of Work: Construction Project

Work Element	NAICS Code	Dollar Cost	Percentage Costs
1	237110	\$500,000	50%
2	238910	\$40,000	4%
2	484220	\$40,000	4%
3	238120	\$250,000	25%
4	237990	\$145,000	15%
5	541380	\$25,000	2.5%
Total		\$1,000,000	100%



Step III:

- Determine the certified firm availability for each NAICS-work element.
 - City Contracts: Search City's Online Directory
 - Federally Funded Contracts: Search TUCP Texas Unified Certification Program.
- Divide Number Of Certified Firms (City Directory/TUCP) by Number of Total Firms (U.S. Census; City's Disparity Study, Bidder's List, etc.)





Step IV: Weighted Availability

- Multiply the Relative Availability by the percentage/dollar value for each work element
- Add all weighted availability numbers to arrive at the contract specific goal.





Sample Goal Calculation

Work Element	NAICS Code	Dollar Cost	Percentage Costs	Availability/ Utilization		Goal % for each work element
1	237110	\$500,000	50%	25%		12.5%
2	238910	\$40,000	4%	40%		1.6%
2	484220	\$40,000	4%	30%		1.2%
3	238120	\$250,000	25%	35%		8.75%
4	237990	\$145,000	15%	25%		3.63%
5	541380	\$25,000	2.5%	45%		1.13%
Total		\$1,000,000	100%		Total	28.80%

Goal Adjustment: Steps I thru IV yield the Initial goal of 28.80%. The final step requires refinement based on knowledge of projects and historical participation, subcontracting opportunities, and current market area. **Any refinement should be documented.** In the event goal cannot be met, good faith efforts should be documented by prime contractor.





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Goal Setting Forms: Submit to OBO

- Goal Modification Request Form
- Contract-Specific Goal Request Form

Goal Modification Request Form





Goal Modification Request Form

To:		istant Director	Solicitation Number:
	Offic	e of Business Opportunity	Estimated Dollar Amount:
From:	Requ	nestor's Name/Title Department	
Type of	Solici	tation: Bid Proposal Other	
Name a	nd Int	ent of this Solicitation:	
PREVIO	OUS (CONTRACT (if any) Yes No	
		Contract: Was Goal met: Yes No	
		t met, what percentage did the vendor achieve?	
_		oal achieved:	-
		LECT THE TYPE OF GOAL MODIFICATIO! iver, Reduced Goal, Goal Revision After Adverásement, O.	
WAIVE	ER		
I am rec	mestin	g a waiver of the MWBE Goal: Yes No	
Reason			
		A public or administrative emergency exists which with unusual immediacy;	requires the goods or services to be provided
		The service or goods requested are of such a specia the city department to be able to select its contract (such as contracts for expert witnesses, certain finan	or without application of MWSBE provisions
		If application of MWSBE provisions would impose the city or unduly delay acquisition of the goods or interest of the city; or	

	If the possible M' negligible MWSBE		level based or	a MWSBE avi	disoliny wou	na produce
	Other:					
De	ailed Explanation of w	iver геязоц:				
REDUCE	GOAL (To be complet	d by the department	prior to advert	isement)		
I am <u>reque</u>	ting a MWBE goal belo	the following cityw	ride goals:			
Constructi	n (34%); Professional Se	vices (24%); Purcha	sing (11%)			
Yes N	If yes, complete a	ontract Specific Goo	al Setting Works	heet and submit	with this form	L
GOAL RI	VISON AFTER ADVE	TISEMENT				
I am reque	ting a <i>revision</i> of the MV	BE Goal: Yes 🔲 1	No 🗌			
	al: New Propose	_	_			
Advertises	ent Date:Numb		eived:E	stimated Dollar	Amount:	
		r of solicitations rec				
	ent Date:Numb	r of solicitations rec				
Detailed r	ent Date:Numb	r of solicitations rec				
Detailed r	ason for request: ATIVE OR INTER-LO	r of solicitations reco	r			
Detailed r	ason for request: ATIVE OR INTER-LO Operative/Interlocal Pur	r of solicitations reco	r Yes No	1		
COOPER Is this a Co	ason for request: ATIVE OR INTER-LO Operative/Interlocal Pur	r of solicitations reco	r Yes No V]		
COOPER Is this a Co If yes, who	ason for request: ATIVE OR INTER-LO Operative/Interlocal Put type: ment explore opportuniti	r of solicitations reco	r Yes □ No □ Yes □ No [firms? Yes □]] No N/A [
COOPER Is this a Co If yes, who	ason for request: ATIVE OR INTER-LO Operative/Interlocal Pur	r of solicitations reco	r Yes □ No □ Yes □ No [firms? Yes □]] No N/A [
COOPER Is this a Co If yes, who	ason for request: ATIVE OR INTER-LO Operative/Interlocal Put type: ment explore opportuniti	r of solicitations reco	r Yes □ No □ Yes □ No [firms? Yes □]] No N/A [
COOPER Is this a C. If yes, who Did Depar If no, plea	ason for request: ATIVE OR INTER-LO Operative/Interlocal Put type: ment explore opportuniti e explain why not:	r of solicitations reco	r Yes □ No □ Yes □ No [firms? Yes □]] No N/A [
Detailed r COOPER Is this a C. If yos, who Did Depar If no, plea	ason for request: ATIVE OR INTER-LO Operative/Interlocal Put type: ment explore opportuniti e explain why not:	r of solicitations reco	r Yes □ No □ Yes □ No [firms? Yes □]] No N/A [
COOPER Is this a Co If yes, who Did Depar If no, plea	ason for request: ATIVE OR INTER-LO Operative/Interlocal Put type: ment explore opportuniti e explain why not:	AL AGREEMENT hasing Agreement?	r Yes □ No □ Yes □ No [firms? Yes □]] No N/A []	
COOPER Is this a Co If yes, who Did Depar If no, plea	ason for request: ATIVE OR INTER-LO Operative/Interlocal Put type: e explain why not: ce: Initiator Dat	AL AGREEMENT hasing Agreement?	r Yes □ No □ Yes □ No □ firms? Yes □]] No N/A []	



Contract Specific Goal Request Form



CONTRACT-SPECIFIC GOAL REQUEST

Consult Department Overview of Contract-Specific Goal Setting, If Needed

Solicitation:			Contracti	ng/ Purcha	sing Depart	tment:	
Contract Type:			В	st. Contrac	t Value:		
Service/ Commodity	c Con	struction (34%) Profe	essional Se	rvices (249	6) Purchasi	ng (11%)
Contract History:	New		Open Con	tract #:			
Goal Oriented:	Ye	is No	P	revious Go	al:		
Step 1: Goal Calcul	ation						
Work Bement Description	NAICS Code	Dollar Cost	% Coet of Contract	Certified Firms (B2G or TUCP*)		Utilization**	Goal % for Work Bernent
Total	as postation	Aundred residente o					

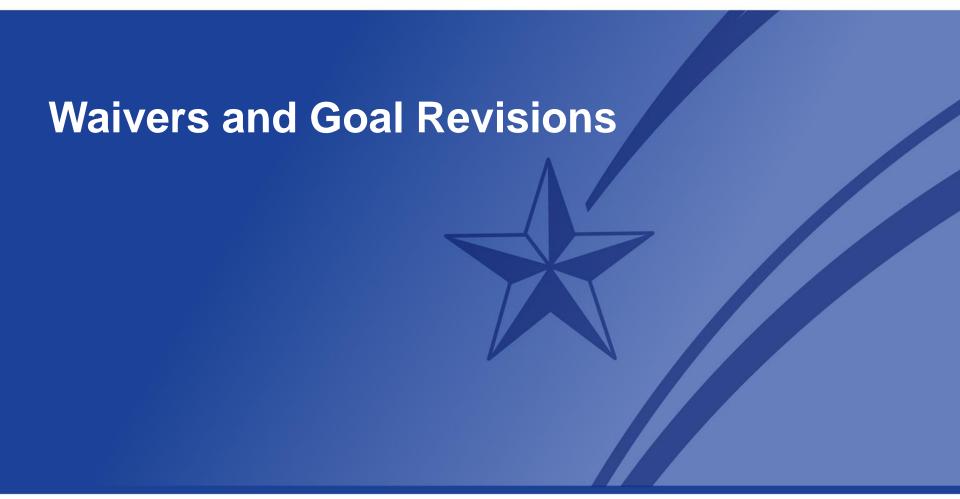
Description of Project:	
Step 2: Goal Adjustments:	
Past Participation:	
Previous Solicitations/ Bidders List:	
Race/ Gender Neutral Participation:	
Additional Comments:	
Proposed Contract-Specific Goal:	
Contracting Department Director/ Designee (Signature and Title)	Date
OBO: Reviewed and Approved:	
see to mener and opposite.	
OBO Department Services Representative Signature	Date

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^{* *} Utilization is established based on availability and/ or percent typically subcontracted out to a certified company



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Waivers and Goal Revisions



- Department Directors must review each waiver requests prior to submission to OBO for approval.
- Waivers are generally granted when there are limited MWSBEs available in the market (3 or fewer) to perform the scope of work identified for the contract or the contract does not lend itself to divisibility
- Goal Revisions: changes to the goal, by the Department, after advertisement but before vendor selection or contract award.
- A Goal Modification Request Form should be submitted to OBO with required info completed: http://citypointe/FASvcs_DEPT/DEPT/obo/Pages/DepartmentServices-Area.aspx



Goal Modification Request Form





Goal Modification Request Form

To:		stant Director to of Business Opportunity	Solicitation Number: Estimated Dollar Amount:
From:	Requ	sestor's Name/Title Department	
		tation: Bid Proposal Other ent of this Solicitation:	
Goal on If goal v	Last C	CONTRACT (if any) Yes No No Contract: Was Goal met: Yes No Contract: Was Goal met: Yes No Contract: Was Goal met: Yes No Contract: No C	-
		LECT THE TYPE OF GOAL MODIFICATION ver, Reduced Goal, Goal Revision After Advertisement, Ol	
WAIVE	ER		
I am req Reason		g a <u>waiver</u> of the MWBE Goal: Yes No No iver:	
		A public or administrative emergency exists which with unusual immediacy;	requires the goods or services to be provided
		The service or goods requested are of such a special the city department to be able to select its contracto (such as contracts for expert witnesses, certain finance	r without application of MWSBE provisions
		If application of MWSBE provisions would impose the city or unduly delay acquisition of the goods or s interest of the city; or	

	If the possible MWSBE participation level based on MWSBE availability would produce
	negligible MWSBE participation.
	Other:
Detai	led Explanation of waiver reason:
REDUCED (GOAL (To be completed by the department prior to advertisement)
	ng a MWBE goal below the following citywide goals:
Construction ((34%); Professional Services (24%); Purchasing (11%)
Yes No	If yes, complete a Contract Specific Goal Setting Worksheet and submit with this form.
GOAL REVI	SON AFTER ADVERTISEMENT
I am requestin	ng a <u>revision</u> of the MWBE Goal: Yes No
-	:New Proposed Goal:
-	
	t Date: Number of solicitations received: Estimated Dollar Amount:
	t Date:Number of solicitations received:Estimated Dollar Amount:
Detailed reas	on for request:
Detailed reas	on for request:
Detailed reas COOPERAT Is this a Co-O	on for request: TVE OR INTER-LOCAL AGREEMENT perative/Interlocal Purchasing Agreement? Yes \(\sum \) No \(\sum \)
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COOPERAT Is this a Co-O If yes, what ty Did Departme If no, please	TVE OR INTER-LOCAL AGREEMENT perative/Interlocal Purchasing Agreement? Yes No perative/Interlocal Purchasing Agreement? Yes No perative/Interlocal Purchasing Certified firms? Yes No N/A explain why not:



When Goals are not Required



- A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy
- Services or goods requested are of such a specialized, technical or unique as to require the city department to be able to select its contractor without application of MWSBE provisions
- Applying MWSBE goals would impose an unwarranted economic burden or risk on the city or unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of the city
- MWSBE participation based on known availability would produce negligible participation

Prior to award of contract, unless an emergent condition exists, Department Directors must specify in writing the reasons for the above determination and submit to OBO for <u>review and approval</u>.



Contract Goal Modifications



- Departments must provide detailed reason for requesting waiver, goal revision or goal reduction
- Request must be submitted prior to advertisement unless goal revision.
- Goals cannot be waived or reduced after a contract has been awarded
- Good Faith Efforts prior to contract award must be submitted by the Prime contractor only



Goal Modifications: Required Supporting Documents

- Written and signed request from Department which includes:
 - Estimated dollar amount of contract
 - Detailed Reason for Request
- Supporting Documentation
 - Sole Source Letter (if applicable)
 - Specifications (Scope of Services or Scope of Work)
 - Previous Outline Agreement Number
 - If no previous OA, submit documentation to support reason for request





Questions?

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Thank You.

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